

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
January 29, 2004 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Ruth Ann Wall, Presiding Officer, presided. No Board members were present.

Jeffrey Buckley appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

- | | |
|---|--|
| 1. Rafael and Lufit Luna and
Jacqueline Sawyer, t/a Wishmakers
File Number 2003-01847 (RF) | None |
| 2. Doris Tucker and
Jeremy H. Hyer, t/a Garages Unlimited
File Number 2003-01631 (RF) | Doris Tucker – C (By Phone)
Compton Biddle – C Atty
(By Phone) |
| 3. Michael and Sandra Walker and
JTY Builders Inc.
File Number 2003-01879 (RF) | Michael Walker – C
Jay & Melinda Yancey – R's |
| 4. Todd Early and Ann McNeil and
Kevin Hooghkirk Inc.
File Number 2003-01873 (RF) | Todd Early – C |
| 5. Peggy Hagerman and
Christopher A. Gay, t/a Elite Home Services
File Number 2003-01705 (RF) | Peggy Hagerman – C
Frances Hampton – C Atty |

6. Arlene Sheppard and
John E. Morrison, t/a John E. Morrison Paving
File Number 2003-01543 (RF) Arlene Sheppard – C
7. Carl and Kimberly Graves and
Prestige Home Center Inc. (Gold Key)
File Number 2002-03170 (RF) Carl & Kimberly Graves – C
David Natkin – C Atty
8. Pixie Curry and
Fredrick Reid, t/a Reid's Construction
File Number 2003-01669 (RF) Pixie Curry – C
9. Delaney Black and
Craig J. Putziger, t/a Star City Heating & Air Conditioning
File Number 2003-00887 (RF) None
10. Michael Munson and
Exterior Solutions Inc.
File Number 2003-01976 (RF) Michael Munson – C
11. David and Sharon Mendoza and
Frederick Kim Hargett, t/a General Maintenance
File Number 2003-01989 (RF) D. & S. Mendoza – C
Charles Osterhoudt – C Atty
Frederick Hargett – R
(All Participants By phone)

The meeting adjourned at 4:00 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Lufit and Rafael Luna (Claimants) and Jacqueline
A.Sawyer, t/a Wishmakers (Regulant)
LICENSE NUMBER: 2705-061287**

FILE NUMBER: 2003-01847

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Lufit and Rafael Luna c/o Robert G. Byrum, Esquire and Jacqueline A. Sawyer, t/a Wishmakers on December 12, 2003. The following individuals participated at the conference: Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

No one appeared on behalf of Jacqueline Sawyer, t/a Wishmakers or on behalf of Rafael and Lufit Luna, the complainants.

Background

On **June 11, 2002**, in Circuit Court of the City of Chesapeake, Lufita Rafael Luna obtained a **Judgment** against Jacqueline Sawyer and David Sawyer, **in the amount of \$5,575.00 and refund of the appeal bond cost of \$25.00 upon expiration of the appeal time.**

The **claim** in the amount of **\$7,157.00** was received by the Department of Professional and Occupational Regulation on **December 26, 2002.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Certified copy of the Order does not recite the basis for the award. A faxed copy received from the Clerk of the Court for the Circuit Court for the City of Chesapeake recites improper and dishonest conduct of the contractor obtaining money and not performing the work agreed upon and not returning to the premises as the basis for the Order.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did not** contract with the regulant, as the regulant was not licensed at the time.

The Board issued Class C License Number 2705061287 to Jacqueline A. Sawyer, t/a Wishmakers, on **March 6, 2001**. The license was permanently revoked on **May 30, 2003**. The claimants entered into an agreement with Wishmakers for the construction of a garage and other improvements. A contract was not provided by the claimants. The claimants provided a document reflecting a breakdown of costs. The second page of the document has the name of "Wishmakers" listed and a signature of a "D. Sawyer", and a date of January 5, 2001.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings and/or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **June 11, 2002**. The claim was received on **December 26, 2002**.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with Wishmakers for the construction of a garage.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted, as the regulant could not be found.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Certified copy of the Order does not recite the basis for the award. A faxed copy received from the Clerk of the Court for the Circuit Court for the City of Chesapeake recites improper and dishonest conduct of the contractor obtaining money and not performing the work agreed upon and not returning to the premises as the basis for the Order.

In the Affidavit of Facts dated **August 29, 2002**, the claimant asserts that Mr. and Mrs. Sawyer received \$5,575.00 prior to starting the project. The garage was never built for the claimants and the money was never returned.

10. **Code of Virginia, Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia, 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record, it is recommended that the claim be approved for payment in the amount of \$7,157.00, including judgment for \$5,575.00, costs of \$82.00 and \$187.00, and attorney fees in the amount of \$1115.00, representing 20% of the judgment amount. The Circuit Court for the City of Chesapeake granted Judgment based on the contractor obtaining money for work not performed, and not returning to the premises. These actions fall within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: _____

Ruth Ann Wall
Presiding Officer
Contractor's Recovery Fund

Date: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS

IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Doris Nance Tucker (Claimant) and Jerry W. Hyer, t/a
Garages Unlimited (Regulant)
LICENSE NUMBER: 2705-053847

FILE NUMBER: 2003-01631

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Doris Tucker, c/o Compton M. Biddle and Jeremy W. Hyer, t/a Garages Unlimited on December 12, 2003. The following individuals participated at the conference: Doris Tucker, Claimant (By Phone); Compton M. Biddle, Attorney for Claimant (By Phone); Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

No one appeared on behalf of Jeremy W. Hyer or Garages Unlimited.

Background

On **July 9, 2002**, in the City of Roanoke General District Court, Doris N. Tucker obtained a **Judgment** against Jeremy W. Hyer, **in the amount of \$4,200.00, plus interest, \$61.00 cost and \$2,000.00 attorney's fees.**

The **claim** in the amount of **\$6,261.00** was received by the Department of Professional and Occupational Regulation on **December 12, 2002.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "Breach of Contract, Fraud" as the basis for the suit. The block designated "Other" has been marked.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did not** contract with the regulant.

The Board issued Class B License Number 2705053847 to Jeremy W. Hyer t/a Garages Unlimited, on **December 22, 1999**. The license was permanently revoked on **March 7, 2002**. The claimant entered into a written contract with Home Concepts on **November 12, 2001** for the construction of a garage at the claimant's residence. The proposal was signed by "Bill" Hyer. The Board for Contractors application for license indicates Jeremy Wayne Hyer as the legal name for Jeremy W. Hyer.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did receive pleadings and/or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **July 9, 2002**. The claim was received on **December 12, 2002**.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with the Home Concepts for the construction of a garage.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted, as the regulant failed to appear.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "Breach of Contract, Fraud" as the basis for the suit. The block designated "Other" has been marked.

In the Affidavit of Facts dated **January 13, 2003**, the claimant asserts that Mr. Hyer received a down payment of \$4,200.00 toward the construction of a

garage. The claimant requested a refund the \$4,200.00 after Mr. Hyer failed to construct the garage. Mr. Hyer agreed to refund the claimant's money. The claimant has not received a refund of the down payment paid to Mr. Hyer.

10. Code of Virginia, Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. Code of Virginia, Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund I.F.F it is recommended that the claim be approved for payment in the amount of \$5,113.20, based on the claim and cost of \$4,261.00 and attorney fees of \$852.20. The payment of the claim is based on the Warrant in Debt, which cites "Fraud" as the basis of the claim, which falls within the definition of improper and dishonest conduct, per §54.1-1118.

By: _____

Ruth Ann Wall
Presiding Officer
Contractor's Recovery Fund

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Michael D. & Sandra A. Walker (Claimants) and JTY Builders, Inc. t/a
JTY Builders, Inc. (Regulant)
LICENSE NUMBER: 2705-051553**

FILE NUMBER: 2003-01879

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Michael and Sandra Walker, c/o John R. Alford, Jr. and JTY Builders, Inc., Attn: Jay T. Yancey, President on December 12, 2004. The following individuals participated at the conference: Michael Walker, Claimants; Jay T. Yancey and Melinda Yancey with JTY Builders, Inc., Regulators; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

Background

On **August 2, 2002**, in the Circuit Court for the County of Bedford, Michael D. Walker and Sandra A. Walker obtained a **Judgment** against JTY Builders, Inc., Jay T. Yancey and Melinda O. Yancey, **in the amount of \$10,000.00, plus interest and \$219.50 costs.**

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **January 9, 2003.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Judgment Order recites improper conduct as the basis of the award.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulator and in connection with a transaction involving contracting.

The claimants **did** contract with the regulator.

The Board issued Class A License Number 2705051553 to JTY Builders, Inc. t/a JTY Builders, Inc., on **August 9, 1999**. The license will expire on **August 31, 2003**. The claimants entered into a written contract with JTY Builders, Inc. on **April 30, 2001** for the construction of a house.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did receive pleadings and/or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **August 2, 2002**. The claim was received on **January 9, 2003**.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with JTY Builders, Inc. for the construction of a house.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the

disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Judgment Order recites improper conduct as the basis of the award.

10. **Code of Virginia, Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia, Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, including but not limited to, a letter dated March 14, 2002 from L.G. Flint General Contractor citing cost to repair defective work and repair, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The Judgment Order recites improper conduct arising from and limited to the continued incompetence and gross negligence of JTY during the construction of the Walkers' new home, which falls within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By:_____

Ruth Ann Wall
Presiding IFF Board Member
Contractor's Recovery Fund

Date:_____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Todd Early and Anne McNeil (Claimants) and Kevin
Hooghkirk, Inc. t/a Kevin Hooghkirk, Inc. (Regulant)
LICENSE NUMBER: 2705-057135**

FILE NUMBER: 2003-01873

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Todd Early and Anne McNeil and Kevin Hooghkirk, t/a Kevin Hooghkirk, Inc. on December 12, 2003. The following individuals participated at the conference: Todd Early, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

Kevin Hooghkirk, Inc. was not represented at the IFF conference.

Background

On **May 23, 2002**, in Chesterfield County General District Court, Todd C. Early obtained a **Judgment** against Kevin, Inc., **in the amount of \$1,967.50, plus interest and \$102.00 costs.**

The **claim** in the amount of **\$2,251.03 (*includes interest*)** was received by the Department of Professional and Occupational Regulation on **January 9, 2003.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis for the suit. The block designated "Contract" has been marked.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class B License Number 2705057135 to Kevin Hooghkirk, Inc. t/a Kevin Hooghkirk, Inc. on **August 3, 2000**. The license is schedule to expire on **August 31, 2004**. The Board for Contractors business name history record reflects a name change on June 20, 2000 from Kevin, Inc., to Kevin Inc. On April 23, 2002 a name change occurred from Kevin Inc. to Kevin Hooghkirk, Inc. The claimants entered into a written contract with Kevin, Inc. on **September 10, 2001** for the installation of a fence at the claimants' residence.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **May 23, 2002**. The claim was received on **January 9, 2003**.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with Kevin, Inc. for the installation of a fence at the claimants' residence.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor

anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? The claimants did not answer the question.

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant failed to appear for the interrogatories.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt does not recite the basis for the suit.

In the Affidavit of Facts dated **December 30, 2002**, the claimant asserts a deposit was paid to Mr. Hooghkirk prior to constructing a fence at the claimants' residence. The regulant never returned to construct the fence. The claimants requested that the money paid to the regulant be refunded. The regulant agreed to refund the claimants deposit. The regulant issued several checks to the claimants with insufficient funds. The regulant also provided the claimants with "forged" documentation as an attempt to prove payments had been issued to the claimants. The claimants have never received their deposit from the regulant.

10. **Code of Virginia, Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "Yes-Eastern (case was dismissed)"

11. Code of Virginia, Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form **does** include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$2,069.50, which includes monies paid and bank cost for a returned check. The payment of the claim is based on the failure to return funds for work not done, which falls within the definition of improper and dishonest conduct, per §54.1-1118.

By: _____

Ruth Ann Wall
Presiding IFF Board Member
Contractor's Recovery Fund

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Peggy Hagerman (Claimant) and Christopher A. Gay t/a
Elite Home Services (Regulant)
LICENSE NUMBER: 2705-059494**

FILE NUMBER: 2003-01705

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Peggy Hagerman c/o Frances H. Hampton, Esquire and Christopher A. Gay, t/a Elite Home Services on December 12, 2003. The following individuals participated at the conference: Peggy Hagerman, Claimant; Frances H. Hampton, Attorney for Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

Christopher A. Gay, t/a Elite Home Services was not represented at the IFF conference.

Background

On **October 12, 2001**, in the Virginia Beach General District Court, Peggy Hagerman obtained a **Judgment** against Christopher Gaye, **in the amount of \$8,366.50, plus interest, \$30.00 costs and \$1,357.61 attorney's fees.**

On **August 6, 2002**, in the Virginia Beach General District Court, Peggy Hagerman obtained a **Judgment** against Christopher Gaye, **in the amount of \$60.00 costs and \$1,006.00 attorney's fees.**

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **December 19, 2002.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt dated October 12, 2001 does not recite the basis for the suit. The block designated "Contract" has been marked.

The Warrant in Debt dated August 6, 2002 recites "default under agreement for payment of court ordered judgment" as the basis of the suit. The block designated "Other" has been marked.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant **did** contract with the regulant.

The Board issued Class C License Number 2705059494 to Christopher A. Gay t/a Elite Home Services, on **November 17, 2000**. The license expired on **November 30, 2002**. The claimant entered into a written contract with Elite Home Services on **May 12, 2001** for the construction of a sunroom at the claimant's residence. The claimant entered into a second contract (not signed or dated) for general home improvements at the claimant's residence.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The first Judgment was entered on **October 12, 2001**. The second Judgment was entered on **August 6, 2002**. The claim was received on **December 19, 2002**.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Elite Home Services for the construction of a sunroom at the claimant's residence. The claimant entered into a second contract for general home improvements at the claimant's residence.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt dated October 12, 2001 does not recite the basis for the suit. The block designated "Contract" has been marked.

The Warrant in Debt dated August 6, 2002 recites "default under agreement for payment of court ordered judgment" as the basis of the suit. The block designated "Other" has been marked.

In the Affidavit of Facts dated **November 20, 2002**, the claimant asserts "the Regulant's failure to complete a construction contract in a timely manner, failure to complete work that was to have been performed under the contract, Regulant's misrepresentation as to his ability to perform the work and lack of

appropriate license to complete much of the same, and the work that was completed by Regulant performed in a negligent manner that resulted in additional expense to the Claimant”.

10. Code of Virginia, Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, “No.”

11. Code of Virginia, Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be approved for payment in the amount of \$10,000.00. In addition, the payment of the claim is based upon the failure of the regulant to complete work contracted for and default under agreement for payment of court ordered judgments. After the first judgment the contractor signed a promissory note dated June 3, 2002, to pay the money on a regular basis, he paid nothing, therefore Ms. Hagerman had to go back to court for a second claim. It is my opinion that this was a deliberate action on the part of the contractor to prevent Ms. Hagerman from receiving monies from the Recovery Fund. I find these actions fall within the definition of improper and dishonest conduct per Section 54.1-1118.

By:_____

**Ruth Ann Wall
Presiding Officer
Contractor’s Recovery Fund**

Date:_____

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Arlene Sheppard (Claimant) and John E. Morrison, t/a
John E. Morrison Paving (Regulant)
LICENSE NUMBER: 2705-044819

FILE NUMBER: 2003-01543

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Arlene Sheppard and John E. Morrison, t/a John E. Morrison Paving on December 12, 2003. The following individuals participated at the conference: Arlene Sheppard, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

No one appeared on behalf of John E. Morrison, t/a John E. Morrison Paving.

Background

On **October 8, 2002**, in Chesterfield County General District Court, Arlene Sheppard obtained a **Judgment** against John E. Morrison, **in the amount of \$1,750.00, plus interest, \$36.00 costs.**

The **claim** in the amount of **\$1,883.00** was received by the Department of Professional and Occupational Regulation on **January 16, 2003.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "Paving Co. did not use thickness per contract. Driveway falling apart. Work guaranteed." as the basis of the suit. The block designated "Contract" has been marked.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class C License Number 2705044819 to John E. Morrison, t/a John E. Morrison Paving, on **May 13, 1998**. The license was permanently revoked on **January 29, 2003**. The claimant entered into a written contract with the regulant on **September 9, 1999** for the installation of a driveway at the claimant's residence.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **October 8, 2002**. The initial claim was received on **October 25, 2002**, followed up by a second claim received January 16, 2003.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with the regulant for the installation of a driveway at the claimant's residence.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of

the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant could not be found.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "Paving Co. did not use thickness per contract. Driveway falling apart. Work guaranteed."

In the Affidavit of Facts dated **October 9, 2002**, and notarized **January 16, 2003**, the claimant asserts that the regulant was to install a 3" blacktop driveway, kill all weeds prior to installing the blacktop and provide a 1 year guarantee. In some areas the driveway has a 1" depth and several deep crevasses are visible from the rollers used during the installation of the driveway. The sides of the drive way are breaking off and weeds are growing through the thin areas of the blacktop. The regulant agreed to correct the discrepancies, but did not return to the project.

10. **Code of Virginia, Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia, Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$1,883.00 (judgment for \$1,750.00.00 plus \$108.00 court cost and a \$25.00 attorney fee).

The Warrant in Debt recites "Paving Co. did not use thickness per contract. Driveway falling apart. Work guaranteed" as the basis for the Judgment, which falls within the definition of improper and dishonest conduct per Section 54.1-1118, Code of Virginia.

By: _____

Ruth Ann Wall
Presiding Officer
Contractor's Recovery Fund

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Carl E. and Kimberly H. Graves (Claimants) and Prestige
Home Center, Inc., t/a Prestige Home Center, Inc. (Regulant)
LICENSE NUMBER: 2705-041518**

FILE NUMBER: 2002-03170

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Carl and Kimberly Graves, c/o H. David Natkin, P.C. and Prestige Home Center, Inc., Attn: Robert Moore, Vice President on

December 15, 2003. The following individuals participated at the conference: Carl and Kimberly Graves, Claimants; H. David Natkin, P.C., Claimants Attorney; Jeffrey Buckley, Staff Member; and Ruth Ann Walls, Presiding Officer.

No one appeared on behalf of Robert Moore or Prestige Home Center, Inc.

Background

On **June 25, 2002**, in the Circuit Court for the County of Rockbridge, Carl Edward Graves, Jr., and Kim Graves obtained an **Amended Judgment Order** against Gold Key Homes, Inc., and Prestige Home Center, Inc., **in the amount of \$15,000.00, plus interest and costs.**

The **claim** in the amount of **\$15,574.00** was received by the Department of Professional and Occupational Regulation on **July 1, 2002.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Amended Judgment Order does not recite the basis for the award.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

A copy of the contract was not provided.

The Board issued Class A License Number 2705041518 to Prestige Home Center, Inc., t/a Prestige Home Center, Inc., on **October 16, 1997**. The license was permanently revoked on **December 3, 1999**. The claimant entered into a written contract with **Gold Key Homes, Inc.**, in the calendar year 1999 for the purchase of a new dwelling (per the Motion for Judgment).

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The Amended Judgment Order was entered on **June 25, 2002.**

The claim was received on **July 1, 2002.**

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with **Gold Key Homes, Inc.**, in the calendar year 1999 for the purchase of a new dwelling (per the Motion for Judgment). No copy of the signed contract was provided.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted (as per question 7 on the claim form).

A copy of the Summon to Answer Interrogatories has been included in the file. In the Affidavit of Facts, the claimants state the regulant had no assets.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Amended Judgment Order does not recite the basis of the award. In the Motion for Judgment states the claimants purchased a home from Gold Key Homes, Inc. There are numerous defects in the dwelling which have not been corrected.

10. **Code of Virginia, Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia, Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

During the IFF, Ms. Graves stated that they dealt with David Higgins, and that Higgins was contracting on behalf of Prestige Home Center, Inc. Attorney Natkin further stated that R. Nystrom operated both Gold Key Homes and Prestige Home Center, Inc. According to the licensing records, R. Nystrom is the president of Prestige Home Center, Inc.

Based upon information presented at the Recovery Fund IFF and the unsatisfied Judgment Order, it is recommended the claim be approved for payment in the amount of \$10,000.00. The claimants provided credible testimony which substantiated a loss greater than \$10,000.00. In addition, the payment of the claim is based on the failure of the regulant to

correct defects in construction and workmanship as warranted. I find these actions fall within the definition of improper and dishonest conduct per Section 54.1-1118.

By: _____

Ruth Ann Wall
Presiding Officer
Contractor's Recovery Fund

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Pixie E. Curry (Claimant) and Fredrick Reid t/a Reid's
Construction (Regulant)
LICENSE NUMBER: 2705-062897**

FILE NUMBER: 2003-01669

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Pixie E. Curry, c/o William K. Lewis and Fredrick Reid, t/a Reid's Construction on December 15, 2003. The following individuals participated at the conference: Pixie E. Curry, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

No one appeared on behalf of Fredrick Reid, t/a Reid's Construction.

Background

On **June 21, 2002**, in the United States Bankruptcy Court, Eastern District of Virginia, Frederick Reid, filed a Chapter 7 Petition.

On **July 10, 2002**, in City of Richmond, General District Court, Pixie Curry obtained a **Judgment** against Reid's Construction, Inc., **in the amount of \$12,000.00, plus interest and \$30.00 costs.**

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **October 1, 2002.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis of the suit. The block designated "Contract" has been marked.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant **did** contract with the regulant.

The Board issued Class C License Number 2705062897 to Fredrick Reid t/a Reid's Construction, on **May 3, 2001**. The license expired on **May 31, 2003**. The claimant entered into a written contract with Reid's Construction, Inc., for the renovation of a carriage house and shed located at the claimant's address.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **July 10, 2002**. The claim was received on **October 1, 2002**.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Reid's Construction, Inc., for the renovation of a carriage house and shed located at the claimant's address.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant failed to appear.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt does not recite the basis of the suit. The block designated "Contract" has been marked.

In the Affidavit of Facts dated **July 16, 2002**, the claimant and regulant entered into a contract for the renovation of a carriage house and the construction of an attached shed. The claimant asserts the regulant received two payments toward the construction of the project. The regulant started the project and did not finish. The contract was in the amount \$6,200.00. The claimant received a judgment in the amount of \$12,000.00, plus interest and \$30.00 costs.

10. Code of Virginia, Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. Code of Virginia, Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF and the judgment awarded by the General District Court for the City of Richmond in the amount of \$12,000.00, plus costs, it is recommended the claim be approved for payment in the amount of \$10,000.00. Failure by the regulant to complete the project falls within the definition of improper and dishonest conduct per Section 54.1-1118.

By: _____

Ruth Ann Wall
Presiding Officer
Contractor's Recovery Fund

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Delaney C. Black (Claimant) and Craig J. Putziger t/a Star
City Heating and Air Conditioning (Regulant)
LICENSE NUMBER: 2705-024199**

FILE NUMBER: 2003-00887

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Delaney C. Black and Craig J. Putziger, t/a Star City Heating & Air Conditioning on December 12, 2003. The following individuals participated at the conference: Jeffrey Buckley, Staff Member; and Ruth Ann Hall, Presiding Officer.

No one appeared on behalf of Craig J. Putziger, t/a Star City Heating & Air Conditioning, Regulant or Delaney C. Black, Claimant.

Background

On **September 16, 2002**, in the City of Roanoke General District Court, Delaney C. Black obtained a **Judgment** against Craig Putziger, **in the amount of \$600.00, plus interest and \$55.00 costs.**

The **claim** in the amount of **\$655.00** was received by the Department of Professional and Occupational Regulation on **September 26, 2002.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis for the suit. The block designated "Contract" has been marked.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The Board issued Class A License Number 2705024199 to Craig J. Putziger, t/a Star City Hearing and Air Conditioning, on **June 1, 1994**. The license expired on **June 30, 2002**. There was no written contract. A copy of a check dated June 10, 2002 paid to Craig Putziger has been provided by the claimant. The regulant was to provide and install a new furnace for the claimant's residence.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

Judgment was entered on **September 16, 2002**. The claim was received on **September 26, 2002**.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The regulant was to provide and install a new furnace for the claimant's residence.

The claimant did not have a written contract with the regulant.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution?

Does your business involve the construction or development of real property?
Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The claimant asserts the regulant could not be found and the Secretary of the Commonwealth could not be served for interrogatories.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt does not recite the basis of the suit.

In the Affidavit of Facts dated **November 6, 2002** the claimant asserts the regulant received a check in the amount of \$600.00 toward the replacement and installation of a new furnace at the claimant's residence. The regulant cashed the check and never returned to complete the project or returned the claimants money.

10. **Code of Virginia, Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia, Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, and the Judgment awarded by the General District Court for the City of Roanoke, Virginia, it is recommended that the claim be approved for payment in the amount of \$655.00. The regulant's actions of receiving a check from the claimant, which he cashed, and never returned to complete the project or return the claimants money falls within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: _____

Ruth Ann Wall
Presiding Officer
Contractor's Recovery Fund

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Michael Munson (Claimant) and Exterior Solutions, Inc. t/a
Exterior Solutions, Inc. (Regulant)
LICENSE NUMBER: 2705-057428
FILE NUMBER: 2003-01976**

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Michael Munson and Exterior Solutions, Inc. on December 15, 2003. The following individuals participated at the conference: Michael Munson, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

No one appeared on behalf of Exterior Solutions.

Background

On **December 17, 2002**, in the Prince William General District Court, Michael J. Munson obtained a **Judgment** against Exterior Solutions, Inc., **in the amount of \$4,836.61, plus interest and \$55.00 costs.**

The **claim** in the amount of **\$4,927.61** was received by the Department of Professional and Occupational Regulation on **January 23, 2003.**

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "did not complete work under contract" as the basis for the suit. The block designated "Contract" has been marked.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant **did** contract with the regulant.

The Board issued Class B License Number 2705057428 to Exterior Solutions, Inc. t/a, Exterior Solutions, Inc., on **July 28, 2000**. The license expired on **July 31, 2002**. The claimant entered into a written contract with Exterior Solutions, Inc., on **March 24, 2002** for the finishing of the basement at the claimant's residence.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **December 17, 2002**. The claim was received on **January 23, 2003**.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Exterior Solutions, Inc., for the finishing of the basement at the claimant's residence.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. On the Summons to Answer Interrogatories the block designated "Not found" has been marked and a notation has been made "moved".

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "did not complete work under contract" as the basis for the suit. The block designated "Contract" has been marked.

In the Affidavit of Facts dated **January 21, 2003**, the claimant asserts the regulant was hired to finish the basement of the claimant's residence for a total contract amount of \$13,230.00. The regulant received a total of \$11,550.00 during the different phases of construction. The regulant did not return to the project to complete the work. The claimant made phone calls and sent written correspondence to the regulant requesting that the regulant return to complete the project. The regulant has not responded to the phone calls or correspondence and has not returned to complete the project. The claimant has incurred additional expense in completing the construction.

10. Code of Virginia, Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. Code of Virginia, Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$4,927.61. The Warrant in Debt cites "did not complete work under contract" as the basis for the Judgment, which falls within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: _____

Ruth Ann Wall
Presiding Officer
Contractor's Recovery Fund

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of David and Sharon Mendoza (Claimants) and Frederick Kim
Hargett, t/a General Maintenance (Regulant)
LICENSE NUMBER: 2705-040855**

FILE NUMBER: 2003-01989

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on January 29, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to David and Sharon Mendoza, c/o Charles Osterhoudt and Frederick Kim Hargett, t/a General Maintenance on December 16, 2003. The following individuals participated at the conference: David and Sharon Mendoza, Claimants (By phone); Charles Osberhoudt, Attorney for the Claimants (By Phone); Frederick Kim Hargett, Regulant (By Phone); Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

Background

On **August 13, 2002**, in the United States Bankruptcy Court, Western District Virginia, Frederick Kim Hargett filed a Chapter 7 Petition.

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **January 23, 2003**.

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

Frederick Kim Hargett filed for bankruptcy protection. Therefore, judgment was not obtained.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class C License Number 2705040855 to Frederick Kim Hargett, t/a General Maintenance, a sole proprietorship on **April 30, 1998**. The license will expire on **April 30, 2004**. The claimants entered into a written contract with Hargett, General Maintenance on **August 7, 2000** for renovations to be performed on the second floor at their 1214 Floyd Avenue, Roanoke, Virginia address.

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The claim was received on **January 23, 2003**. Judgment was not obtained as the regulant filed for bankruptcy protection.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Hargett, General Maintenance for renovation work to be performed.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee,

the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant filed for bankruptcy protection.

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

Judgment was not obtained.

In the Affidavit of Facts dated March 21, 2003, the claimant asserts he entered into a contract with Frederick K. Hargett, d/b/a General Maintenance, to remodel a portion of the residence at 1214 Floyd Avenue for rental.

10. **Code of Virginia, Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "Yes."

11. Code of Virginia, Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

During the IFF Attorney Osterhoudt stated the Mendozas incurred \$16,430.39 in costs, which included the \$750.00 paid to Hargett, materials purchased by the Mendozas, and other expenses incurred as a result of water damage. The record was left open for 7 days to allow Mr. Osterhoudt an opportunity to provide written documentation for these costs.

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be approved for payment in the amount of \$10,000.00. The claimants provided credible documentation which substantiated a loss greater than \$10,000.00. The payment of the claim is based on the failure of the regulant to return to the property to complete the work contracted for and to protect the property from water damage. Substantial rain damage was incurred to the property as a result of Hargett's failure to properly protect the property. I find these actions fall within the definition of improper and dishonest conduct per Section 54.1-1118.

By: _____

Ruth Ann Wall
Presiding Officer
Contractor's Recovery Fund

Date: _____